



June 12, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-2482

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148361.

The Travis County Sheriff's Office ("TCSO") received a request for information relating to Internal Affairs Investigation #00-29. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim that a jail visitation list is confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrines of common law and constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* In Open Records Decision No. 430 (1985), this office determined that release of an inmate's list of visitors would compromise his constitutional right to privacy. Therefore, you must withhold the visitors list that you have marked under section 552.101.

Next, you claim that certain information within the submitted internal investigation file is protected from disclosure by section 552.108(b)(1), which provides as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You argue that release of the witnesses' names and statements from the investigation file "would . . . interfere with law enforcement operations because . . . TCSO personnel would be discouraged from cooperating with such investigations in the future and may fear possible retaliation or harassment." In addition, you wish to withhold the opinions and recommendations of the investigating officer under section 552.108(b)(1).

We do not believe, however, that section 552.108(b)(1) applies to internal administrative investigations that deal with personnel matters. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (concluding that the statutory predecessor to section 552.108 does not apply where there is evidence that no criminal investigation or prosecution resulted from an internal police department investigation). The purpose of the law enforcement exception is to prevent law enforcement and crime prevention techniques from being readily available to the public at large. *Id.* (quoting Open Records Decision Nos. 133 (1976), 127 (1976)). It is not, however, a catch-all provision that law enforcement offices can use to protect certain personnel matters from disclosure. "The public has an obvious interest in having access to information concerning the . . . performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of a sheriff's department." Open Records Decision No. 444 at 3 (1986). In addition, a governmental body cannot promise to keep information confidential if the

Public Information Act requires that the information be available to the public. Open Records Decision No. 585 at 2 (1991). In this instance, the internal investigation was made as a result of an allegation of insubordination by a lieutenant and a clerk of the sheriff's department. Because this investigation deals only with internal personnel matters, we find that release of the information would not interfere with law enforcement operations. Therefore, the submitted information may not be withheld under section 552.108(b)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 148361

Encl. Submitted documents

cc: Lt. Debra Galloway
Travis County Sheriff's Office
P.O. Box 17481
Austin, TX 78767
(w/o enclosures)